

REMARKS

Claims 1, 5, and 7 to 19 remain pending. Claims 2 to 4 and 6 have been canceled.

Claims 12 and 15 have been objected to. Claim 12 has two instances of the term "a stick." Claim 15 has two instances of the term "a barrier function enhancing agent."

Claims 12 and 15 have been amended to address the objections. Duplication has been eliminated.

Claims 1 to 19 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,364,617 to Bush et al (the Bush patent). The Action states that the Bush patent discloses compositions for protecting skin from the harmful effects of ultraviolet radiation. The Action further states that the effects include premature aging of the skin, wrinkling and yellowing of the skin, and cracking and loss of elasticity. The action further states that the disclosed composition can be in lipstick form (col. 18, line 24) and can be applied to the lips to inhibit damage from acute or chronic exposure (Example IV).

The rejection of claims 1 and 7 to 19 is traversed. Independent claims 1 and 18 require that both a retinoid and a penetration enhancing agent be employed, that the composition be applied to the lip epithelia, and that selective improvements to lip epithelia aesthetics be made. The composition and method of the Bush patent do not meet these requirements. The requirements

of independent claims 1 and 18 are discussed below in view of the disclosure of the Bush patent.

First, the Bush patent does not disclose compositions having a retinoid and a penetration enhancing agent and a method for applying such compositions to the lip epithelia. The Bush patent discloses lipstick compositions and a method of application at col. 18, line 24 and Example IV. However, the disclosure of a lipstick at col. 18, line 24 does not specify any ingredients, let alone a retinoid and/or a penetration enhancing agent. Further, the lipstick composition and method at Example IV do not delineate a retinoid at all in the ingredient listing. It is significant that retinoids are disclosed in the Bush patent as an optional ingredient. Evidence that retinoids are an optional ingredient is seen in the claims of the Bush patent. Retinoids are set forth in claim 7, a dependent claim. The Bush patent discloses a preferred composition having retinoids at col. 25, lines 11 to 18, but this composition does not have a penetration enhancing agent and it is not disclosed as being specifically for application to lip epithelia. Likewise, penetration enhancing agents are disclosed as optional ingredients in the Bush patent at col. 18, lines 43 to 47 (note the language "...may also include..."). The Bush patent discloses the use of penetration enhancing agents to enhance the penetration of a chelator (col. 15, lines 33 to 38) but later discloses that chelators that penetrate more readily are preferred (col. 18, lines 50 and 51). Thus, in the instance of the incorporation of chelators in the compositions of the Bush patent, use of penetration enhancing agents is desirably minimized, if not eliminated entirely.

Clearly, the use of penetration enhancing agents is not required according to the teachings of the Bush patent.

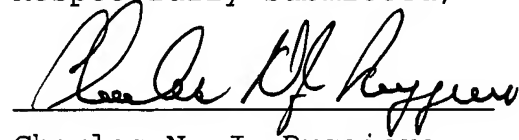
Second, the Bush patent does not disclose the selected improvements to lip epithelia aesthetics. The Bush patent discloses that the disclosed composition and method is useful for treating skin damage from exposure to sunlight and ultraviolet light but does not attribute this to presence of retinoids. The primary active ingredient in the composition and method of the Bush patent is the disclosed chelators (cols. 5 to 10). Retinoids are mere optional ingredients. Retinoids are disclosed at col. 24, lines 67 and 68 as useful in regulating wrinkles. The Bush patent does not attribute any improvements whatsoever in lip epithelia aesthetics to the presence of retinoids, let alone the selected improvements. It is clear that independent claims 1 and 18 are novel and nonobvious in view of the teachings of the Bush patent.

Amendments to claims 9, 10, 12, 15, 17 and 19 were effected to correct punctuation. The amendments are not to be construed as altering the scope of such claims.

Reconsideration of claims 1 and 7 to 19 is deemed warranted in view of the foregoing, and allowance of said claims is earnestly solicited.

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Respectfully submitted,



Charles N. J. Ruggiero
Reg. No. 28,468
Attorney for Applicants
Ohlandt, Greeley, Ruggiero
& Perle, L.L.P.
One Landmark Square
Stamford, CT 06901-2682
Tel: 203-327-4500